

SYU/430203

Firm No. 14503

240-199

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MARY ANN HERTZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 08 C 864
	)	
HUMANA HEALTH PLAN OF OHIO, LTD.	)	Judge Lefkow
d/b/a HUMANA INSURANCE COMPANY, a	)	Magistrate Judge Mason
Kentucky corporation registered in Illinois,	)	
SLAVIN & SLAVIN, an Illinois partnership,	)	
MARK F. SLAVIN, an Individual,	)	
PAULA M. WISNIOWICZ, an individual, and	)	
SHARI B. SLAVIN, an Individual,	)	
	)	
Defendants.	)	

**DEFENDANTS, SLAVIN & SLAVIN,  
MARK SLAVIN, PAULA WISNIOWICZ, AND SHARI SLAVIN'S  
MOTION TO DISMISS**

Now come the Defendants, SLAVIN & SLAVIN, MARK F. SLAVIN, PAULA M. WISNIOWICZ, and SHARI B. SLAVIN (hereinafter collectively "Slavin"), by and through their attorneys, Tressler, Soderstrom, Maloney & Priess LLP, pursuant to Fed. R. Civ. P. 12(b)(6), and moves to dismiss Plaintiff Mary Ann Hertz's ("Plaintiff") Complaint for the following reasons and those set forth in greater detail in Slavin's Memorandum in Law in support of this motion which is incorporated herein by reference and filed simultaneously herewith:

1. Plaintiff filed a complaint for breach of ERISA and for other relief against Slavin and Humana Health Plan of Ohio, Ltd. d/b/a Humana Insurance Company.

2. Specifically, Plaintiff filed three claims against Slavin relating to an ERISA plan: Count I—Breach of ERISA; Count II—Negligent Misrepresentation; and Count III—Promissory Estoppel.

3. Plaintiff's claims for breach of ERISA in Count I of the Complaint must be dismissed because Plaintiff has failed to exhaust the required administrative remedies. In the alternative, Plaintiff's claims in Count I must be dismissed for failure to state a claim.

4. Plaintiff's claims for negligent misrepresentation and promissory estoppel, Counts II and III of the Complaint, must be dismissed because these claims are preempted by ERISA.

WHEREFORE, Defendants, SLAVIN & SLAVIN, MARK F. SLAVIN, PAULA M. WISNIOWICZ, and SHARI B. SLAVIN, respectfully request that this Court enter an order dismissing Counts I, II, and III of Plaintiff's Complaint and for such other relief as this Court deems is necessary and just.

Respectfully submitted,

SLAVIN & SLAVIN, MARK F. SLAVIN, PAULA  
M. WISNIOWICZ, and SHARI B. SLAVIN

By: /s/ Kathleen A. Sweitzer  
One of Their Attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2008, a copy of the foregoing Defendants, Slavin & Slavin, Mark F. Slavin, Paula M. Wisniowicz, and Shari B. Slavin's Motion to Dismiss was filed electronically. Notice of this filing will be sent to the following parties by via the Court's electronic filing system. Parties may access this filing through the Court's system.

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/s/ Kathleen A. Sweitzer

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